

cost of housing in that area for members of the uniformed services serving in the same pay grade as that member (as determined under regulations prescribed under paragraph (4)), and (B) 115 percent of the amount of the basic allowance for quarters to which that member is entitled.

“(3) For the purposes of this subsection, an area shall be considered to be a high housing cost area with respect to a member of a uniformed service whenever the average monthly cost of housing in that area for members serving in the same pay grade as that member (as determined under regulations prescribed under paragraph (4)) exceeds 115 percent of the amount of the basic allowance for quarters of that member.

“(4) Regulations shall be prescribed for the administration of this subsection in the same manner that regulations are prescribed under subsection (j) of section 403 of title 37, United States Code, for the administration of such section.”

PAY CONTINUATION

Amendment of this section by Pub. L. 92-129 not to reduce the pay to which any member of the uniformed services was entitled on June 30, 1971, see section 210 of Pub. L. 92-129, set out as a note under section 203 of this title.

1962 INCREASE IN QUARTERS ALLOWANCE

Act Oct. 12, 1949, ch. 681, title III, § 302(f), 63 Stat. 812, as amended by Pub. L. 87-531, § 1, July 10, 1962, 76 Stat. 152, which had provided for increases in quarters allowances without amending subsec. (a) of this section through the device of effecting an amendment to section 302(f) of the Career Compensation Act of 1949, was repealed by section 75(5) of Pub. L. 89-718 except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun before November 2, 1966. The substance of these quarters allowance increases were incorporated into the text of this section through the amendment of subsec. (a) of this section by Pub. L. 89-718.

ENLISTED MEMBERS WITHOUT DEPENDENTS

Act Oct. 12, 1949, ch. 681, title III, § 302(g), 63 Stat. 812, which provided that enlisted members without dependents shall be entitled to a basic allowance for quarters at the rate of \$51.30 per month, was repealed by Pub. L. 87-531, § 2, July 10, 1962, 76 Stat. 152. Laws effective after Jan. 9, 1962, that are inconsistent with Pub. L. 87-649, to be considered as superseding Pub. L. 87-649 to the extent of the inconsistency, see section 12(a) of Pub. L. 87-649, set out as a note preceding section 101 of this title.

AUTHORITY OF SECRETARIES WITH RESPECT TO PAYMENT OF QUARTERS ALLOWANCES

Pub. L. 87-531, § 5, July 10, 1962, 76 Stat. 153, provided that: “The Secretaries of the departments concerned shall have the same authority with respect to payments of quarters allowances to enlisted members of the uniformed services to pay grades E-4 (over 4 years’ service) through E-9 that they have with respect to enlisted members of the uniformed services in pay grades E-1, E-2, E-3, and E-4 (4 years’ or less service) under sections 10 and 11 of the Dependents Assistance Act of 1950 (50 App. U.S.C. 2210, 2211).”

REGULATIONS RELATING TO QUARTERS ALLOWANCE

Regulations relating to basic allowance for quarters, see Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, set out as a note under section 301 of this title.

EXECUTIVE ORDER NO. 10204

Ex. Ord. No. 10204, Jan. 16, 1951, 16 F.R. 417, as amended by Ex. Ord. No. 11120, Oct. 2, 1963, 28 F.R. 10631; Ex. Ord. No. 11146, Mar. 13, 1964, 29 F.R. 3417, which related to regulations governing basic allowances for quarters,

was revoked by Ex. Ord. No. 11157, June 22, 1964, 29 F.R. 7973, set out as a note under section 301 of this title.

CROSS REFERENCES

Assimilation of pay and allowances, see section 1003 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 407, 420, 1003, 1009 of this title; title 32 section 107; title 50 App. section 454.

§ 403a. Variable housing allowance

(a)(1) Except as provided in subsection (b), a member of a uniformed service entitled to basic allowance for quarters is entitled to a variable housing allowance under this section whenever assigned to duty in an area of the United States which is a high housing cost area with respect to that member. A member with dependents who is assigned to an unaccompanied tour of duty outside the United States is entitled to a variable housing allowance while serving that tour of duty for any period during which the member’s dependents reside in an area of the United States where, if the member were assigned to duty in that area, the member would be entitled to receive a variable housing allowance. The allowance authorized by this section may be paid in advance.

(2) In the case of a member with dependents—

(A) who is assigned to duty inside the United States the location or the circumstances of which make it necessary that his dependents reside at another location; and

(B) whose dependents reside in an area of the United States where, if the member were assigned to duty in that area, the member would be entitled to receive a variable housing allowance at a rate other than the rate to which the member is entitled (if at all) in the area of his duty assignment,

the member may be paid a variable housing allowance as if he were assigned to duty in the area in which his dependents reside if the Secretary concerned determines (under regulations prescribed under subsection (e)) that it would be inequitable to base the member’s entitlement to, and amount of, variable housing allowance on the area to which the member is assigned.

(3) In the case of a member with dependents—

(A) who is assigned to an unaccompanied tour of duty in Alaska or Hawaii; and

(B) who would, if his duty station were outside the United States, be entitled to a family separation allowance under section 427(a) of this title,

the member may be paid a variable housing allowance at the rate applicable to a member without dependents serving in the same grade and at the same location. Payment of a variable housing allowance under this paragraph shall be in addition to any allowance or per diem to which the member otherwise may be entitled under this title.

(4) In the case of a member with dependents—

(A) who is assigned to duty inside the United States;

(B) who is authorized to receive the basic allowance for quarters at the rate established

for a member with dependents solely by reason of the payment of child support by the member; and

(C) who is not assigned to a housing facility under the jurisdiction of a uniformed service, the member may be paid a variable housing allowance at the rate applicable to a member without dependents serving in the same grade and at the same location.

(5)(A) In the case of a member described in subparagraph (B) who is assigned to duty away from the member's principal place of residence (as determined under regulations prescribed by the Secretary of Defense), the member shall be considered to be assigned to duty at that residence for the purpose of determining the entitlement of the member to a variable housing allowance under this section.

(B) A member referred to in subparagraph (A) is a member of a uniformed service who—

- (i) is a member of a reserve component called or ordered to active duty (other than for training) or is a retired member ordered to active duty under section 688(a) of title 10; and
- (ii) is not authorized transportation of household goods under section 406 of this title from the member's principal place of residence to the place of that duty assignment.

(b) A member of a uniformed service may not be paid a variable housing allowance—

(1) in the case of a member who makes a change in permanent duty station, for the number of days that travel is authorized between permanent duty stations (under regulations prescribed under subsection (e));

(2) in the case of a member with dependents who is authorized the basic allowance for quarters at the rate established for a member with dependents solely by reason of the payment of child support by the member, if—

(A) the member is assigned to a housing facility under the jurisdiction of a uniformed service;

(B) the member (i) is assigned to duty outside the United States or in Alaska or Hawaii, and (ii) is authorized a station housing allowance under section 405 of this title; or

(C) the member is assigned to sea duty and elects not to occupy assigned quarters for unaccompanied personnel, unless the member is in a pay grade above E-6;

(3) in the case of a member of a reserve component, while on active duty under a call or order to active duty specifying a period of less than 140 days, unless the call or order to active duty is in support of a contingency operation; or

(4) unless the member makes an annual certification (in accordance with such regulations as the Secretary of Defense may prescribe) to the Secretary concerned identifying the housing costs of the member.

(c)(1) The monthly amount of a variable housing allowance under this section for a member of a uniformed service with respect to an area is the difference between (A) the median monthly cost of housing in that area for members of the uniformed services serving in the same pay

grade and with the same dependency status as that member, and (B) 80 percent of the median monthly cost of housing in the United States for members of the uniformed services serving in the same pay grade and with the same dependency status as that member.

(2) The rates of variable housing allowance shall be reduced as necessary to comply with subsection (d).

(3) The effective date of any adjustment in rates of variable housing allowance because of a redetermination of median monthly costs of housing under this subsection shall be the same as the effective date of the next increase after such redetermination in the basic allowances for quarters.

(4) For the purposes of this section, an area shall be considered to be a high housing cost area with respect to a member of a uniformed service whenever the median monthly cost of housing in that area for members of the uniformed services serving in the same pay grade and with the same dependency status as that member exceeds 80 percent of the median monthly cost of housing in the United States for members of the uniformed services serving in the same pay grade and with the same dependency status as that member.

(5) Any reduction required under paragraph (2) and any determination of median monthly costs of housing under this subsection shall be made under regulations prescribed under subsection (e).

(6)(A) The monthly variable housing allowance that would otherwise be paid to a member under this section shall be reduced by an amount equal to one-half of the amount (if any) by which—

(i) the total monthly housing allowance prescribed for members of the same grade as such member who are assigned to duty in the same area as such member (or in the same area in which the dependents of the member reside, as appropriate), exceeds

(ii) the monthly housing costs of the member in the area in which the member is assigned to duty (or in the area in which the dependents of the member reside, as appropriate).

(B) In subparagraph (A), the term "total monthly housing allowance" means, in the case of any member, the sum of—

(i) the monthly basic allowance for quarters to which the member is entitled; and

(ii) the monthly variable housing allowance prescribed for the same grade as such member for the area in which the member is assigned to duty (or in the area in which the dependents of the member reside, as appropriate).

(d)(1) The total amount that may be paid for a fiscal year for the variable housing allowance authorized members of the uniformed services by this section is the product of—

(A) the total amount authorized to be paid for such allowance for the preceding fiscal year (as adjusted under paragraph (3)); and

(B) a fraction—

(i) the numerator of which is the military housing cost index for October of the preceding fiscal year; and

(ii) the denominator of which is the military housing cost index for October of the fiscal year before the preceding fiscal year.

(2) The military housing cost index is the housing component of the Consumer Price Index (as determined by the Bureau of Labor Statistics of the Department of Labor), as adjusted under regulations prescribed under subsection (e). Such regulations may assign weights to the elements of that housing component other than those assigned by the Secretary of Labor in order more appropriately to reflect the distribution of elements of housing costs of members of the uniformed services.

(3) In making a determination under paragraph (1) for a fiscal year, the amount authorized to be paid for the preceding fiscal year for the variable housing allowance shall be adjusted to reflect changes during the year for which the determination is made in the number, grade distribution, and dependency status of members of the uniformed services entitled to variable housing allowance from the number of such members during the preceding fiscal year. Adjustments under this paragraph shall be made in accordance with regulations prescribed under subsection (e).

(e)(1) The Secretary of Defense may prescribe regulations for the administration of this section.

(2) Any regulations prescribed under paragraph (1) may not allow—

(A) an increase in the variable housing allowance rate for a pay grade in an area solely to prevent the variable housing allowance rate for a lower pay grade in that area from exceeding such rate; or

(B) a failure to lower the variable housing allowance rate for a pay grade in an area in accordance with a decrease in housing costs for such pay grade in that area determined on the basis of the annual certifications of housing costs of members of the uniformed services receiving a variable housing allowance for that area.

(3) Paragraph (2) shall not apply to regulations prescribed with respect to any pay grade in an area for which available data describe fewer than 50 persons in the pay grade.

(f) The monthly rate of a variable housing allowance for members of the uniformed services in the same pay grade and dependency status in an area may not be reduced pursuant to subsection (c)(2), a redetermination of median monthly costs of housing under that subsection, or any other law to the extent that the total amount of monthly basic pay, basic allowance for quarters, basic allowance for subsistence, and variable housing allowance for that grade and status is reduced, as a result of such a reduction in variable housing allowance, below the monthly total of those items of pay and allowances for the month preceding the effective date of the most recent increase in the rate of basic pay for that grade.

(Added Pub. L. 98-525, title VI, § 602(d)(1), Oct. 19, 1984, 98 Stat. 2534; amended Pub. L. 99-145, title VI, §§ 602(a)-(d), 604(b), Nov. 8, 1985, 99 Stat. 636-638; Pub. L. 100-26, § 8(e)(8), Apr. 21, 1987, 101

Stat. 286; Pub. L. 101-189, div. A, title VI, § 602(a), Nov. 29, 1989, 103 Stat. 1445; Pub. L. 101-510, div. A, title VI, § 602, Nov. 5, 1990, 104 Stat. 1575; Pub. L. 102-25, title VII, § 702(b)(1), (2), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 102-190, div. A, title VI, §§ 603, 604(b), 633, Dec. 5, 1991, 105 Stat. 1373, 1374, 1381; Pub. L. 103-160, div. A, title VI, § 604, Nov. 30, 1993, 107 Stat. 1679.)

AMENDMENTS

1993—Subsec. (b)(2)(C). Pub. L. 103-160 added subpar. (C).

1991—Pub. L. 102-25 struck out “of this section” wherever appearing, except in subsecs. (c)(4) and (e)(1), and struck out “of this subsection” wherever appearing.

Subsec. (a)(5). Pub. L. 102-190, § 603, added par. (5).

Subsec. (b)(2)(B). Pub. L. 102-190, § 604(b)(1)(A), struck out “or” at end.

Subsec. (b)(3). Pub. L. 102-190, §§ 604(b)(1)(B), 633, substituted “140 days, unless the call or order to active duty is in support of a contingency operation; or” for “140 days.”

Subsec. (b)(4). Pub. L. 102-190, § 604(b)(1)(C), added par. (4).

Subsec. (e)(1). Pub. L. 102-190, § 604(b)(2)(A), substituted “Secretary of Defense” for “President”.

Subsec. (e)(2)(A). Pub. L. 102-190, § 604(b)(2)(B), (C), substituted “an area” for “a survey area” and “that area” for “the survey area”.

Subsec. (e)(2)(B). Pub. L. 102-190, § 604(b)(2)(B), (D), substituted “an area” for “a survey area” and “that area determined on the basis of the annual certifications of housing costs of members of the uniformed services receiving a variable housing allowance for that area” for “such area reported on the variable housing allowance survey”.

Subsec. (e)(3). Pub. L. 102-190, § 604(b)(2)(B), substituted “an area” for “a survey area”.

1990—Subsec. (c)(2). Pub. L. 101-510, § 602(1), struck out before period at end “, except that the monthly amount of a variable housing allowance for a member may not be reduced to the extent that the total of basic pay, basic allowance for quarters, basic allowance for subsistence, and variable housing allowance of the member is reduced, as a result of such a reduction, below the monthly total of those items for the month preceding the effective date of the most recent increase in the rate of basic pay of the member.”

Subsec. (f). Pub. L. 101-510, § 602(2), added subsec. (f).

1989—Subsec. (c)(2). Pub. L. 101-189 inserted before period at end “, except that the monthly amount of a variable housing allowance for a member may not be reduced to the extent that the total of basic pay, basic allowance for quarters, basic allowance for subsistence, and variable housing allowance of the member is reduced, as a result of such a reduction, below the monthly total of those items for the month preceding the effective date of the most recent increase in the rate of basic pay of the member”.

1987—Subsec. (c)(6)(B). Pub. L. 100-26 inserted “the term” after “In subparagraph (A).”.

1985—Subsec. (a)(1). Pub. L. 99-145, § 604(b), inserted provision that allowance authorized by this section may be paid in advance.

Subsec. (a)(4). Pub. L. 99-145, § 602(a), added par. (4).

Subsec. (b). Pub. L. 99-145, § 602(b)(1), substituted “may not be paid” for “is not entitled to” in provisions preceding par. (1).

Subsec. (b)(2). Pub. L. 99-145, § 602(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “in the case of a member with dependents, if the member (A) is assigned to unaccompanied personnel housing of the United States (or an unaccompanied personnel housing facility under the jurisdiction of a uniformed service) appropriate to his grade, rank, or rating and adequate for himself, and (B) is authorized the basic allowance for quarters at the rate established for

a member with dependents solely by reason of a court order requiring the member to pay support for dependents; or”

Subsec. (c)(1), (4), Pub. L. 99-145, § 602(c)(1), inserted “and with the same dependency status” after “in the same pay grade” wherever appearing.

Subsec. (c)(6), Pub. L. 99-145, § 602(c)(2), added par. (6).

Subsec. (e)(1), Pub. L. 99-145, § 602(d), designated existing provisions as par. (1) and added pars. (2) and (3).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 604(b) of Pub. L. 102-190 effective six months after Dec. 5, 1991, see section 604(c) of Pub. L. 102-190, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 602(b) of Pub. L. 101-189 provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1990.”

EFFECTIVE DATE OF 1985 AMENDMENT

Section 602(f) of Pub. L. 99-145 provided that:

“(1) The amendments made by subsections (a), (b), and (d) [amending this section] shall take effect on October 1, 1985.

“(2) The amendments made by subsection (c)(1) [amending this section] shall apply as if included in the enactment of section 403a of title 37, United States Code, by section 602(d) of the Department of Defense Authorization Act, 1985 (Public Law 98-525).

“(3) The amendment made by subsection (c)(2) [amending this section] shall take effect on the first day of the first month beginning 90 days or more after the date of the enactment of this Act [Nov. 8, 1985].”

Amendment by section 604(b) of Pub. L. 99-145 effective Oct. 1, 1985, see section 604(c) of Pub. L. 99-145, set out as a note under section 403 of this title.

EFFECTIVE DATE

Section 602(f) of Pub. L. 98-525, as amended by Pub. L. 99-145, title VI, § 603(b), Nov. 8, 1985, 99 Stat. 637; Pub. L. 99-661, div. A, title XIII, § 1342(b), Nov. 14, 1986, 100 Stat. 3991, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 403 and 405 of this title, section 7572 of Title 10, Armed Forces, and provisions set out as a note under section 403 of this title, and enacting provisions set out as a note under section 403 of this title] shall take effect on January 1, 1985.

“(2)(A) A member shall be entitled to receive a station housing allowance under section 405 of title 37, United States Code, as if the amendments made by subsection (e) [amending section 405 of this title] had not been enacted, if the member, on the date of the enactment of the Department of Defense Authorization Act, 1986 [Nov. 8, 1985]—

“(i) is assigned to a permanent duty station in Alaska or Hawaii; and

“(ii) is entitled to payment of a temporary lodging allowance or a station housing allowance under section 405 of such title.

“(B) A member who is entitled to a station housing allowance by reason of subparagraph (A) shall only be entitled to such allowance until the earlier of—

“(i) the date on which the member changes residence in conjunction with a permanent change of duty station; or

“(ii) the expiration of the four-year period beginning on the date of the enactment of the Department of Defense Authorization Act, 1986 [Nov. 8, 1985].

“(C) A member who is entitled to a station housing allowance by reason of subparagraph (A) shall not be entitled to a variable housing allowance, except that such a member serving an unaccompanied tour of duty in Alaska or Hawaii may be paid a variable housing allowance based on the residence of the member's dependents in another State.

“(3) For the period beginning on January 1, 1985, and ending on September 30, 1985, the limitation applicable under subsection (d)(1) of section 403a of title 37, United States Code (as added by subsection (d)), on the total amount that may be paid during a fiscal year for the variable housing allowance authorized members of the uniformed services by that section shall be 15 percent of the median annual costs of housing in the United States for members of the uniformed services as measured during fiscal year 1984. In determining for the purposes of clause (A) of such subsection the total amount authorized to be paid for such allowance for fiscal year 1985, such amount shall be determined as if the amendments made by this section took effect on October 1, 1984.”

[Amendment of this note by Pub. L. 99-661 effective Nov. 14, 1986, see section 1342(h)(1) of Pub. L. 99-661, set out as an Effective Date of 1986 Amendment note under section 301 of this title.]

SAVINGS PROVISION; 1985 AMENDMENT

Section 602(e) of Pub. L. 99-145 provided that: “A member described in paragraph (4) of section 403a(a) of title 37, United States Code, as added by subsection (a), who on September 30, 1985, is receiving variable housing allowance at the rate applicable to a member with dependents shall continue to be entitled to variable housing allowance at the appropriate rate applicable to a member with dependents until the member departs his duty station as a result of a permanent change of station.”

RESERVE AND RETIRED MEMBERS SERVING IN CONNECTION WITH PERSIAN GULF CONFLICT

Section 303 of Pub. L. 102-25 provided that:

“(a) USE OF PRINCIPAL PLACE OF RESIDENCE.—For the purpose of determining the entitlement of a Reserve described in subsection (b) to a variable housing allowance under section 403a of title 37, United States Code, the Reserve shall be considered to be assigned to duty at the Reserve's principal place of residence, determined as prescribed by the Secretary of Defense.

“(b) RESERVE DESCRIBED.—A Reserve referred to in subsection (a) is a member of a reserve component of the uniformed services who is serving on active duty under a call or order to active duty in connection with Operation Desert Storm and is assigned to duty away from the Reserve's principal place of residence, determined as prescribed by the Secretary.”

Section 1111(b) of Pub. L. 101-510, as amended by Pub. L. 102-25, title III, § 314(1), (2)(A), (B), Apr. 6, 1991, 105 Stat. 86, provided that:

“(1) In the case of Reserve members called or ordered to active duty (other than for training) and retired members called to active duty under section 688 of title 10, United States Code, in connection with the Persian Gulf conflict, the variable housing allowance under section 403a of title 37, United States Code, shall be paid to such members without regard to the limitation in subsection (b)(3) of that section.

“(2) The limitation in subsection (d) of that section on the total amount of variable housing allowance that may be paid for a fiscal year shall not apply for fiscal year 1991 or for fiscal year 1992.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403 of this title; title 2 section 906; title 10 section 7572.

§ 403b. Cost-of-living allowance in the continental United States

(a) PAYMENT AUTHORIZED.—The Secretary concerned may pay a cost-of-living allowance to the eligible members of a uniformed service under the jurisdiction of the Secretary.

(b) ELIGIBLE MEMBERS.—The following members are eligible to receive a cost-of-living allowance under this section: